

## **7 FAM 1700 APPENDIX A ADOPTION CASE PROCESSING GUIDANCE IN NON-HAGUE COUNTRIES**

*(CT:CON-426; 11-26-2012)*

*(Office of Origin: CA/OCS/L)*

### **7 FAM 1710 APPENDIX A SUMMARY**

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Handling intercountry adoption cases efficiently, responsibly, and in accordance with U.S. and foreign laws is one of the Department's highest priorities. The Bureau of Consular Affairs (CA) will continue to work closely with posts to ensure consular officers have the training and information they need to ensure an efficient and transparent process of adjudicating intercountry adoptions. The policy guidance in this appendix is provided to assist officers who are handling these sensitive cases in countries that are not yet party to the Hague Adoption Convention. The Department is working with U.S. Citizenship and Immigration Services (USCIS) to develop detailed guidance related to processing Form I-600 petitions, including Form I-604 investigations. Once finalized, this guidance will be incorporated in the Foreign Affairs Manual (FAM). Posts with questions or concerns should contact the Overseas Citizens Services, Office of Children's Issues (CA/OCS/CI) and Visa Office, Office of Field Support and Liaison, Post Liaison Division (CA/VO/F/P).

### **7 FAM 1720 APPENDIX A STARTING EARLY – UNDERSTANDING YOUR COUNTRY OF ORIGIN**

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- a. Consular officers preparing for a new assignment are urged to make time for consultations with their country officers in CA/OCS/CI's adoption division, CA/VO/F/P, Visa Office, Office of Legislation, Regulations, and Advisory Assistance, Advisory Opinions Division (CA/VO/L/A), and the Office of Consular Fraud Prevention Programs (CA/FPP) before departing for post. CA/OCS/CI can also assist consular officers in scheduling consultations with relevant USCIS offices that oversee adoption issues both domestically and abroad. CA wishes to ensure that every consular officer has the tools and training necessary to effectively manage this highly specialized category of immigrant visa. CA/OCS/CI has also developed an in-depth one-day adoption consultation for consular officers embarking on assignments in countries with high-volume

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and/or high profile adoption caseloads. Consular Section chiefs at high-volume adoption posts -- whether in convention or non-convention countries -- should encourage this day-long consultation for all officers who will work on adoptions.

- b. Country-specific information on the Department's adoption Web site is the best place to start for host-country adoption information. Review the page on your host country and alert your country officer in CA/OCS/CI when updates are needed. Talk to your contacts at post and learn which entity in the host government has authority over adoption processing. There may be multiple entities that control the process. Find out if there are any known tensions or inconsistencies among the relevant host government entities. Research the foreign legal process and foreign law to determine how a child becomes eligible for adoption, what the requirements for prospective adoptive parents to be adoptive parents are, how prospective adoptive parents are matched with an eligible child, what fees are charged for services rendered and by whom, and what the procedures are to complete an adoption. We encourage you to meet with your adoption counterparts at regular intervals to determine whether there have been any changes in adoptions laws and regulations and to promote consideration of accession to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention). CA/OC/CI has talking points for meetings on any of the above points.
- c. To combat document fraud in the adoption process, obtain exemplars of local adoption documents, signatures, and lists of names of government officials authorized to sign adoption-related documents. Ask government officials what screening processes they have in place to combat fraudulent documents and malfeasance in the adoption system in general. Keep your USCIS overseas field office informed of any adoption-related issues at your post and ensure that your CA/FPP liaison officer is informed of any potential fraud issues. If there is a USCIS field office in your country, develop a strong, collaborative working relationship with its staff and work together in coordinating interaction with government officials and other entities regarding orphan adoption issues. Note that when USCIS is present in country, USCIS officers are responsible for adjudicating Form I-600 petitions. This appendix describes actions that consular staff, in coordination with USCIS staff if present at post or available to travel to participate, can undertake to become fully knowledgeable about the adoption environment and potential fraud issues.
- d. If local law permits, establish contact with adoption service providers (ASPs) in-country, and learn what rules and regulations govern their activities. Meet with local ASPs as a group to make them aware of U.S. scrutiny in Non-Hague countries, and to inform them of U.S. laws, regulations, and procedures. Form an intercountry adoption working group consisting of adjudication and fraud prevention equivalents from like-minded missions.
- e. Understand what fraud concerns exist in the host country to identify potential weaknesses in the child welfare and adoption systems. If local officials are

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susceptible to bribery or corruption, scrutinize incoming cases even more closely. Use the fraud report to share information on adoption fraud indicators and trends and prevailing country conditions and send separate cables to alert CA of more immediate, emergent issues. To find your host country's fraud report, please see CA/FPP's Web site.

- f. Visit local orphanages to gather information for a database of adoption case characteristics. Simple data input of cases and investigation as to the kinds of orphans available for adoption in-country can help create a baseline of norms for adoptions at post. Once the baseline is established, cases which present themselves outside of the norms (for example, unusually large numbers of children found abandoned in a region where birth parents usually relinquish their parental rights) will raise red flags for further case scrutiny. CA/OCS/CI has a database template available for posts' consideration upon request.

## **7 FAM 1730 APPENDIX A COMPLETING FORM I-604**

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- a. Per U.S. Department of Homeland Security (DHS) regulation, a Form I-604, Determination on Child for Adoption (sometimes informally referred to as the "orphan investigation"), must be completed in every orphan case. See 8 CFR 204.3(k)(1). DHS has delegated the authority to complete Form I-604 investigations to consular officers except in circumstances where the Form I-600, Petition to Classify Orphan as an Immediate Relative, is filed overseas in a location where USCIS has an office. Practically, this means that a consular officer will complete a Form I-604 investigation in two instances: 1) when the consular officer adjudicates the Form I-600, Petition to Classify Orphan as an Immediate Relative (IR), that a petitioner has filed overseas in a location where USCIS does not have an office, or 2) when a petitioner files a Form I-600 petition with USCIS domestically, in which case the consular officer generally completes the Form I-604 after the petition is approved. Be aware that USCIS may request that a Form I-604 be completed prior to approval of a domestically filed Form I-600 petition where there are articulable concerns that can only be resolved through the Form I-604 investigation.
- b. The Form I-604 documents that all the legal requirements have been met and the child is eligible to immigrate to the United States. One of these requirements is that the child can be classified as an orphan under U.S. immigration law and therefore is eligible to receive an IR-3 or IR-4 immigrant visa. Consular officers are reminded that while the Form I-604 investigation must be performed in all orphan cases, they should not begin to complete the Form I-604 until the petitioner has actually filed the Form I-600 petition either directly with the Consular Section (if eligible) or with USCIS domestically. (Note: If the petitioner files the Form I-600 petition domestically, consular

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officers will generally receive the approved Form I-600 petition. In these cases, the consular officer will complete the Form I-604 after USCIS approval of the petition, but before the visa application. End note.) There is no adjudicatory basis for pre-screening documents until the Form I-600 is filed. Any opinions rendered before an immigration benefit is formally requested would be pre-adjudicatory, and therefore inappropriate, unless specifically authorized by USCIS. Posts should refer to 9 FAM 42.21 N13.4-4 through N13.5-3 for specific guidance on completion of Form I-604.

## **7 FAM 1740 APPENDIX A WHEN A MORE EXTENSIVE INVESTIGATION IS NECESSARY**

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- a. Every post should have a list of fraud indicators that, if present, would warrant referral of a Form I-600 petition or immigrant visa application to the Fraud Prevention Unit for further investigation. Even small posts should use fraud indicators and refer to the Fraud Prevention Unit cases with one or more indicators that cannot be easily resolved for investigation. Investigators should use the questions asked in Form I-604, which documents a child's status as an orphan, as a guide for determining how to best investigate a child's orphan status. This form is also the basis for documenting any material misrepresentation or ineligibility of the child to receive an immigrant visa. If post has insufficient resources to conduct field investigations that it believes are essential to the integrity of case processing, consular officers should send a front channel cable to the department requesting additional resources.
- b. Although some posts are able to complete most Form I-604 investigations through telephone interviews and verifications of documentation at the embassy, situations do arise when a field investigation is necessary to validate the bona fides of the case. When conducting a field investigation, talk with local government officials, orphanage directors, and neighbors in a language in which they are easily conversant and comfortable using.
- c. It is important to carefully document investigative interviews and statements made by interviewees. Interview notes should include the date, time, location, and identity of any interviewers, interviewees, witnesses, or translators (if used) and any other salient factors surrounding the circumstances of the interview. If an interview reveals material evidence that the child does not meet the orphan definition, try to obtain a sworn statement from the interviewee instead of summarizing their statements. Document any refusal to sign a sworn statement. Be sure to explain any cultural anomalies in a witness' demeanor or responses that may not be readily apparent to a reader who does not have firsthand knowledge of the country. If an investigation reveals inconsistencies, give the interviewee an opportunity to explain the inconsistencies in the record. Also consider including verbatim quotes from the

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interviewee to fully capture salient facts derived from the interview. If a translator is used, confirm in your questions that the interviewee understood the translator and was able to effectively communicate with interviewer. USCIS requires credible, fully-documented evidence to support the issuance of a Request for Evidence (RFE), Notice of Intent to Deny (NOID), or denial notice.

- d. Talk with birth parents, if found, and document what they believe is happening to their child. Ask whether they are aware their child is being placed for intercountry adoption and whether they understand the permanent nature of adoption. Birth parent, witnesses, and other interviews should, to the extent possible, be conducted outside of the presence of local government officials or ASP representatives so the interviewees are able to speak freely.
- e. Verify all civil documents. If you discover falsified documents, include copies in the case file and provide an explanation of how they were identified as fraudulent, including official confirmation by the issuing authority when possible. Also, if possible, provide an exemplar of a genuine document for comparison. Indicate whether the falsified document is a genuine document containing false information, or if it is a counterfeit or forged document. In either case, investigate the underlying facts and explain if and why the falsified document makes the child ineligible for orphan classification. If you believe the adoption is not valid under the law of the country of origin, include a copy of the country's applicable law in the case file (with an English translation, if possible) and provide an explanation of why the adoption is not valid. Generally an officer should not look behind an adoption decree, unless there is evidence that the court order was obtained fraudulently or was based on a misrepresentation. Additional guidance can be found at 9 fam 42.21 N13.2-3.
- f. Talk to the adoptive child, if appropriate. If the adoptive child appears old enough to speak for him or herself, ask the child if he or she is willing to talk with a consular officer or LE staff with no birth parents or ASP officials present. Ask the child what happened to the birth family and document the interview carefully, noting reactions to follow-up questions. Ask the child if he or she knows that an adoption is taking place and that he or she will be moving to the United States permanently.

## **7 FAM 1750 APPENDIX A SENDING CASES TO USCIS**

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- a. There are two separate situations in which posts will send Form I-600 petitions to USCIS. The first situation is in cases where the Form I-600 petition has been filed at post (where USCIS is not present) and the consular officer has determined that the evidence of record does not clearly establish that the beneficiary is an orphan as defined under U.S. law (i.e., the petition is therefore "not clearly approvable"). Consular officers should feel free to contact the

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appropriate USCIS office abroad with any factual questions as to whether a petition is not clearly approvable before approving or referring a case. When transferring a case to the regional USCIS office covering that country as not clearly approvable, the consular officer must include: 1) the Form I-600 petition; 2) the completed Form I-604; 3) a memo explaining why the case is not clearly approvable; and 4) all supporting documentation. (See list of overseas USCIS offices and their jurisdictions. After transferring the case to USCIS, the consular officer should also inform the petitioner in writing that the case was transferred to USCIS, and provide contact information for the USCIS office to which the case was transferred.

- b. The second situation is when USCIS has already approved a Form I-600 petition either at USCIS' National Benefits Center (NBC) or at a USCIS office overseas and the petition has been sent to post for completion of the Form I-604 investigation and visa application. If, after receiving an approved Form I-600 from USCIS, a consular officer becomes aware of serious adverse information -- either from the results of the Form I-604 investigation or through other evidence that comes to light during visa processing -- that would likely have led USCIS to deny the petition had it been known at the time of approval, the consular officer should return the petition to USCIS for possible revocation. In these cases, post must return the case to the USCIS office that originally approved the petition (either to NBC via the National Visa Center (NVC) or directly to the appropriate USCIS office overseas) with a memo recommending revocation of the petition approval. When returning a Form I-600 petition to USCIS for possible revocation, consular officers must include: 1) the Form I-600 petition; 2) a completed Form I-604; 3) a memo recommending revocation (often referred to as a Consular Return Memo); and 4) all supporting documentation. The memo should explain what adverse evidence was discovered in the course of either the Form I-604 investigation or during visa interview/screening and state why USCIS approval would not have been proper had the information been known at the time of adjudication. Please refer to the adoption fraud prevention tools on the Office of Fraud Prevention Program's Web page.
- c. While both situations -- forwarding a Form I-600 as not clearly approvable and returning an approved Form I-600 for recommended revocation -- require similar memos to be drafted, it is important for consular officers to be aware that different requirements and standards apply.
- d. For Form I-600 petitions filed directly with an embassy or consulate that have not already been approved, DHS has delegated authority to consular officers to approve Form I-600 petitions that are clearly approvable. Per 8 CFR 204.3(k)(2), consular officers are only authorized to approve a Form I-600 petition if: 1) USCIS has made a favorable determination on the related Form I-600A (and it is valid at time of the Form I-600 filing); 2) the petitioner has traveled to the country in which there is no USCIS office to locate or adopt a child and has properly filed a Form I-600 with the embassy or consulate; and 3)

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the petition is "clearly approvable."

- e. A petition is considered "clearly approvable" if the Form I-600 and the Form I-604 establish that the child is an orphan under U.S. law; the child fits all the criteria identified in the Form I-600A approval (and any state pre-adoption requirements have been met for IR-4 cases); the child has been adopted abroad and each adoptive parent saw the child in person before or during the adoption, or the adoptive parent(s) have legal custody of the child for emigration to the United States and adoption after the child arrives; and there is no evidence of child-buying, fraud, or material misrepresentation. If there is any reason that a petition would not qualify as "clearly approvable," the case should be transferred to the USCIS office overseas having jurisdiction. Additional guidance on "not clearly approvable" cases can be found in 9 FAM 42.21 N13.4-3.
- f. For Form I-600 petitions previously filed with and approved by USCIS (referred to as "Consular Returns"), consular officers may return the approved Form I-600 petition to USCIS if post discovers new evidence during the Form I-604 investigation or during visa processing that would have likely resulted in denial of the petition at the time of USCIS adjudication. In such cases, consular officers should return the petition to the USCIS office that approved the petition along with a memo recommending revocation based on the new evidence. By statute, USCIS may revoke approval of a visa petition if "good and sufficient cause" exists for doing so. "Good and sufficient cause" exists if, at the time of the proposed revocation, the evidence of record, if unexplained or un rebutted, would warrant denial of the petition. While the burden of proof remains with the petitioner, USCIS must have evidence that would support a reasonable person in finding that the approval should be revoked. Observations or suspicions not supported by probative evidence are not enough. Guidance on cases returned with a recommendation for revocation can be found at 9 FAM 42.21 N13.6-2 and 9 FAM 42.43 N2.
- g. Posts should never keep a Form I-600 petition or immigrant visa application pending indefinitely. Fraud investigations and memo drafting should be completed as quickly as possible. All memos to USCIS must be fully documented, very detailed, and clearly state why the consular officer does not believe that the child meets any provision of the orphan definition under the INA and 8 CFR 204.3. Refer to the CA/FPP Web page on adoption fraud prevention tools for templates for memos to USCIS. Upon request, CA/FO and CA/FPP will review return memos before you send them.
- h. USCIS may take one of several different actions when a case is forwarded as "not clearly approvable" or returned to USCIS with a recommendation for revocation. If the petition was sent to USCIS as not clearly approvable, USCIS will review the case and may take one or more of the following actions: approve the petition; issue an RFE to the prospective adoptive parent (PAP) petitioner; send a NOID to the PAP; or issue a denial. In cases in which the petition was previously approved by USCIS but the consular officer has

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returned it for possible revocation, USCIS may take one or more of the following actions: Reaffirm the petition's approval; send a Notice of Intent to Revoke (NOIR) to the PAP petitioner; send an RFE to the PAP petitioner; or revoke the approved petition. In many cases, the PAP will have an opportunity to provide additional evidence in support of a petition. This additional evidence can lead USCIS to approve or reaffirm a petition for which it had sent an RFE, a NOID, or a NOIR.

- i. If USCIS approves or reaffirms a petition but the consular officer adjudicating the visa application believes that the applicant is not eligible for a visa, or discovers new evidence that the consular officers believes would result in a Consular Return, post should send an advisory opinion to CA/VO/L/A requesting further guidance per 9 FAM 42.43 N4.1 and N4.2. CA/VO will advise post on next steps.

## **7 FAM 1760 APPENDIX A GATHERING INFORMATION ON ASP PRACTICES**

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- a. If consular officers uncover instances in which a Hague accredited ASP, including any representative of such asp, appears to be involved in child-buying, fraud, or other illicit activity in connection with an orphan adoption, either post or the person making the complaint should consider filing a complaint using the Hague Complaint Registry (HCR).
- b. Reportable activities of a Hague accredited ASP in a Non-Hague country through the HCR are limited to conduct that implicates convention accreditation standards. Posts should consider reporting illicit activities of an accredited asp in non-Convention cases, where it may implicate the Convention accreditation standards found in 22 CFR Part 96. The standards most likely implicated are the ethical conduct and child-buying provisions in 22 CFR 96.35 and 96.36. Whenever a complaint is filed, the accrediting entity evaluates whether the alleged conduct impacts the agency's current accreditation. The accrediting entity can also consider post's report(s) when the ASP applies for accreditation renewal, at which point patterns of conduct may be apparent. If post has evidence that any ASP is bribing foreign officials, post should forward this information to CA/OCS/CI's Adoption Division country officer, who will coordinate with the Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L), CA/FPP, and the Office of the Legal Adviser for Consular Affairs (L/CA) to determine the appropriate course of action. A list of adoption country officers is found on the CA Intranet Web site (scroll down to the Adoption Division listings) for information on Hague accreditation standards. Similarly, if you are aware of ASPs that are not Hague accredited, but for which there is evidence of illegal or unethical practices, please report that information through your Adoption Division country officer. CA/OCS/CI will determine the

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appropriate course of action in consultation with the relevant offices. Posts may also advise prospective adoptive parents that they may file complaints concerning their Non-Hague accredited ASP with the state's adoption agency licensing authority or Better Business Bureau. If you believe a U.S. citizen and/or an ASP may have violated U.S. law, please notify your RSO and CA/OCS/CI who can advise on how best to refer the case to the appropriate federal authorities for investigation.

## **7 FAM 1770 APPENDIX A REPORT, REPORT, REPORT**

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Posts are reminded of the importance of regular, front channel adoption reporting, particularly in high volume, high fraud adoption countries. Trend and case analyses keep CA management apprised of country conditions and emergent issues likely to affect future adoptions and enable the Department and USCIS to defend their decisions before Congress, the public, and adoption stakeholders. CA routinely shares reporting cables with USCIS and relies upon reporting cables to provide clearly articulable reasons why host country documents cannot be relied upon in many cases, or the need for birth mother interviews, or full field investigations. Posts should examine their recent adoption reporting history and make a commitment to continuing or reinvigorating their adoption reporting efforts. Upon request, CA/OCS/CI can provide samples of cables from posts that have provided recent, high quality adoption reporting.

## **7 FAM 1780 APPENDIX A THROUGH 1790 APPENDIX A UNASSIGNED**